Michigan Metal Processing Corporation *and* Fred L. Crowe. Case 14–CA–14678

June 21, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On June 3, 1981, Administrative Law Judge Walter H. Maloney, Jr., issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions[1] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Michigan Metal Processing Corporation, Granite City, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

[1] We agree with the Administrative Law Judge's conclusion that under the rationale of *Alleluia Cushion Co., Inc.*, 221 NLRB 999 (1975), Respondent violated Sec. 8(a)(1) of the Act by threatening employees with discharge or other reprisals because they filed a complaint with the Occupational Safety and Health Administration of the U.S. Department of Labor (OSHA). We further find that the facts in the instant case show actual concerted activity. Thus, the Charging Party, who was a member of and union spokesman on the union-management plant safety committee, and employee Richard D. Weisbrodt together filed a complaint with the local OSHA office about safety problems at the plant. Their joint conduct concerning working conditions clearly constituted concerted protected activity.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT threaten employees with discharge or other reprisal because they have filed complaints with the Occupational Safety and Health Administration of the U.S. Department of Labor.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guartanteed them by Section 7 of the Act.

MICHIGAN METAL PROCESSING CORPORATION

DECISION

STATEMENT OF THE CASE

WALTER H. MALONEY, JR., Administrative Law Judge: This case came on for hearing before me at St. Louis, Missouri, upon an unfair labor practice complaint[1] issued by the Acting Regional Director for Region 14, and amended at the hearing, which alleges that Respondent Michigan Metal Processing Corporation[2] violated Section 8(a)(1) of the Act. More particularly, the complaint alleges that Respondent threatened employees with reprisal for engaging in the concerted protected activity of filing a complaint relative to part safety with the Occupational Safety and Health Administration of the U.S. Department of Labor (OSHA). Respondent entered a formal denial of the allegation and maintains that the individual uttering the threats in question was not a supervisor within the meaning of the Act and that his statements were isolated remarks not amounting to an unfair labor practice. However, Respondent summoned no witnesses and presented no evidence on its own behalf. Upon these contentions, the issues herein were joined.

FINDINGS OF FACT

A. *The Unfair Labor Practices Alleged*

Respondent is a Michigan-based organization which operates a factory in Granite City, Illinois, where it manufactures steel coils. At the Granite City plant it employs about 70 individuals who are represented by Teamsters Local 525. For the past year or so, the Charging Party, Fred L. Crowe, has been the shop steward in this plant. Crowe is a maintenance man who has been employed intermittently by Respondent since March 1979. He is an active member of, and union spokesman on, the Safety

[1] The principal docket entries in this case are as follows: Charge filed by Fred L. Crowe, an individual, against Respondent on February 5, 1981; complaint issued against Respondent by The Acting Regional Director, for Region 14, on February 27, 1981; Respondent's answer filed on March 3, 1981, briefs filed with me by the General Counsel and Respondent on or before April 20, 1981.

[2] Respondent admits, and I find, that it is a corporation licensed to do business in the State of Illinois, where it operates a plant which is engaged in the processing and nonretail sale and distribution of steel coils and related products. During the preceding year, Respondent sold and distributed from its Granite City, Illinois, plant directly to points and places located outside the State of Illinois, goods and materials valued in excess of $50,000. Accordingly, it is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act.

Committee, an organization made up of union and management representatives who meet periodically to discuss safety complaints and the means of correcting them. Early in 1980, Crowe filed an OSHA complaint against Respondent which apparently was not fully resolved.

In January 1981, Crowe and fellow employee Richard D. Weisbrodt went to the Belleville, Illinois, local office of OSHA and lodged another complaint relative to safety problems at Respondent's plant. Apparently the complaints dealt with the use of sulphuric acid in the pickling of steel coils and the operation of an overhead crane. On January 27, 1981, two OSHA inspectors, one an environmental hygienist and the other a safety inspector, came to Respondent's plant to investigate the complaint. In accordance with normal OSHA procedure, a preinspection meeting was held in the office of the company vice president. The meeting included Respondent's vice president, its plant superintendent, the two OSHA representatives, Maintenance Supervisor Don Anklin, and Crowe. Anklin was designated as Respondent's representative and Crowe served as the union representative during the inspection tour of the facility. During the course of the tour, an OSHA inspector saw Weisbrodt on top of a crane, some 35 feet from the floor, without a safety belt and told him to come down.

Early in the morning of the following day, Crowe had occasion to discuss with Anklin an unrelated request by a maintenance employee to be allowed to use company time to clean up after performing double-shift maintenance duty. Anklin indicated that he had no authority to grant such a request. I credit the corroborated and uncontradicted testimony in the record that, in the course of this discussion, Anklin stated, in the presence of Crowe and Weisbrodt, that a couple of guys were going to be fired over this "bullshit yesterday with OSHA." Anklin also told Crowe, during the course of this conversation, that "Rich's [Weisbrodt's] smart mouth [is] going to get him in trouble." Neither Weisbrodt nor Crowe was discharged as a result of the OSHA complaint. It appears that Anklin is no longer employed by Respondent.

B. *Analysis and Conclusions*

1. The supervisory status of Don Anklin

Anklin bore the title of maintenance supervisor and routinely assigned maintenance jobs to employees in that department. On the occasion of the January 27 OSHA inspection, Anklin was designated by Respondent's top management at Granite City to represent the Company in the inspection tour being conducted by OSHA representatives relating to alleged safety violations. As such, he was Respondent's agent in fact with respect to the inspection tour and to any matters relating to or growing out of it. Such agency would certainly encompass remarks relating to the tour and the matters giving rise to it. However, Respondent's vicarious responsibility for Anklin's remarks need not be predicated upon such a narrow basis. It is also uncontradicted in the record that Anklin hired and fired employees and reprimanded them as part of his responsibility for maintaining company discipline. By possessing these statutory hallmarks of supervisory authority, Anklin was a supervisor within the meaning of Section 2(5) of the Act and Respondent is legally responsible for the content of his statements to employees.

2. The statements in question

By now it is well settled that the filing of an OSHA complaint is protected activity within the meaning of Section 7 of the National Labor Relations Act (NLRA), quite apart from whatever protection may be afforded such conduct by the Occupational Safety and Health Act of 1970 (29 U.S.C. 651–678). *Alleluia Cushion Company*, 221 NLRB 999 (1975); *Kiechler Manufacturing Company*, 238 NLRB 398 (1978). Hence, any restraint or coercion which is applied to an employee because he filed such a complaint violates Section 8(a)(1) of the NLRA. I have credited the uncontradicted record testimony that, on January 28, Anklin told Crowe that a couple of guys would be fired because of the OSHA investigation. When he immediately followed these remarks by another statement, in Weisbrodt's presence, that Weisbrodt's "big mouth" would get him in trouble, it is clear from the context that he was referring to the OSHA complaint and was attributing the filing of this complaint, at least in part, to Weisbrodt. There is nothing isolated about a threat to fire an individual anymore that there is something isolated about the act encompassed by the threat. Accordingly, I conclude that Anklin's statements on January 28 to Crowe and Weisbrodt constitute violations of Section 8(a)(1) of the Act.

Upon the foregoing findings of fact, and upon the entire record herein considered as a whole, I make the following:

CONCLUSIONS OF LAW

1. Respondent Michigan Metal Processing Corporation is now and at all times material herein has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. By threatening discharge and other unspecified reprisal against employees because they have filed complaints with the Occupational Safety and Health Administration of the U.S. Department of Labor, Respondent herein has violated Section 8(a)(1) of the Act.

3. The aforesaid unfair labor practices have a close, intimate, and adverse effect on the free flow of commerce within the meaning of Section 2(2) of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record herein considered as a whole,[3] and pursuant to Section 10(c) of the Act, I make the following recommended:

[3] Because the recommended Order is simple and uncomplicated and requires no explanation, I have omitted the customary section entitled "The Remedy."

ORDER[4]

The Respondent, Michigan Metal Processing Corporation, Granite City, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with discharge or other reprisal because they have filed complaints with the Occupational Safety and Health Administration of the U.S. Department of Labor.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act:

(a) Post at Respondent's place of business at Granite City, Illinois, copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director of Region 14, after being duly signed by its authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[4] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."